IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1948.

No. 305.

THE GALION METALLIC VAULT COMPANY,
Petitioner,

v.

EDWARD G. BUDD MANUFACTURING COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF FOR RESPONDENT.

After Respondent's brief was printed, Respondent's counsel have been served with copy of an additional brief filed by Petitioner entitled "Supplemental Brief in Support of Petition."

In the supplemental brief reference is made to the case of *Refrigeration Engineering, Inc. v. York Corporation*, 168 Fed. (2nd), 896 (C. C. A. 9), and Petitioner contends that the decision of the Circuit Court of Appeals for the Ninth Circuit in that case is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the instant case.

In the *Refrigeration Engineering, Inc.* case cited by Petitioner the Circuit Court of Appeals held that in the patent there under consideration, the introductory expression "In combination with a refrigerated space" in the patent claim did not mean that a refrigerated space was an element of the combination.

But, as we have pointed out in our main brief, the question involved in the case at bar is quite different. In the instant case, not only was the "chassis frame" specifically

recited as a part of the claimed combination, but without the inclusion of the chassis frame as an element of the claim, there could not be found in the Respondent's cargo body the "tire carrying compartment,"—also an essential element of the claim.

As pointed out in our main brief, the question whether under any circumstances—for example, the circumstances involved in the *Refrigeration Engineering, Inc.* case cited by Petitioner—an introductory expression in a claim, such as "In an automobile truck, the combination with a chassis frame," could be treated as mere background or environment, was not involved in the case at bar. On the contrary, the decision in the instant case was based not alone on the form of the claim as a combination claim, and the inclusion therein of the chassis frame as an element of the combination, but because without the addition of the chassis frame, that element of the claim reading "means forming a compartment beneath said platform for receiving pneumatic tires" could not be found in the accused body.

In the instant case, the question whether the Palmer patent covered Respondent's cargo body, *per se*, was an ordinary question of patent infringement involving the construction of the claim in the light of the patent and of the facts in the record. In the *Refrigeration Engineering* case, cited by Petitioner, the question of patent claim construction was not the same; and it is respectfully submitted that Petitioner's claim that the decisions of the courts in the two cases are in conflict is without foundation.

Respectfully,

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